

Before The  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C.

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MAY 18 1992

In the Matter of  
Amendment of Section 73.202(b),  
Table of Allotments  
FM Broadcast Stations  
(Bay City and Edna, Texas)

) MM Docket No. 92-56  
)  
) RM-7551

To: Acting Chief, Allocations Branch

Federal Communications Commission  
Office of the Secretary

**COMMENTS OF ROY E. HENDERSON**

Roy E. Henderson, ("Henderson"), by his counsel, pursuant to Sections 1.415 and 1.420 of the Commission's Rules, hereby files his Comments in response to the Notice of Proposed Rulemaking ("NPR") that was issued in the above-captioned proceeding on March 25, 1992:

The first point to be recognized is that the motivating factor for Henderson in filing Comments in this proceeding is not that he has any opposition to the Commission's proposal to upgrade the channel in Bay City nor to the proposed change in the channel in Edna from 269A to 241A. In fact, the change in Channel in Edna is **precisely the same** change that Henderson included as part of his **own** proposal filed in Docket 90-90 on April 27, 1990. 1/ See RM-7412 as further described in Public Notice Report No. 1823 released by the Commission on July 18, 1990. 2/And therein

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1/ It is noted here that the proposal was filed by Henderson d/b/a Fort Bend Broadcasting Company, Inc., since changed directly to Roy E. Henderson, individually.

2/ It is also noted that changes in the Edna allocation were proposed in Docket 89-459 by the petitioner in that proceeding and that Docket is also still pending.

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lies the cause for concern and interest of Henderson in the instant proceeding.

More specifically, it is more than a little disconcerting to Henderson that while he continues to await the Commission's action on Docket 90-90 which has now remained in a 'pending' status for almost two years from the time it was listed on Public Notice, he sees the NPR in this proceeding that suggests that the Commission "...on its own motion..." proposes to adopt a portion of the proposal that Henderson himself made over two years ago and without so much as a recognition that this very proposal is a specific part of Docket 90-90 and continues to await action as part of that proposal.

Had the Edna proposal in this Docket been suggested in conjunction with its proposal in Docket 90-90 and as part of the simultaneous resolution of that docket, we certainly could see the sense of it and there would be no cause for opposition or concern. Conversely, to see this change proposed by the Commission in Docket 92-56 ostensibly "on its own motion" raises obvious concerns that must be addressed.

Clearly, for the commission to suggest that it is proposing this change in Edna on its own motion implies that no party has ever made such a request, thereby making it necessary for the Commission to make the proposal itself, the definition of "on its own motion". With this very proposal languishing for over the past two years in Docket 90-90, this is clearly not the case. The fact that the NPR in Docket 92-56 did not even include a

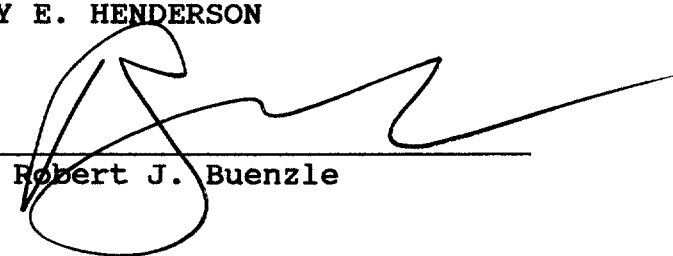
recognition that the substitution of channel 241A for 269A had been proposed in Docket 90-90 and was in fact still pending and awaiting action in that docket would seem to indicate that this most important fact may have been somehow overlooked.

We, of course, are not in a position to know if this was in fact the case. We must therefore go on record here as protesting the characterization in this rulemaking that the channel change in Edna was on the Commission's own motion. That channel change was and is part of the overall proposal included in Docket 90-90 and should be resolved as part of that pending proceeding. To simply pluck that portion of the Docket 90-90 proposal out and seek to treat it here in a vacuum with no explanation and no consideration of the comments that were timely filed and included in Docket 90-90 would appear to be an egregious and patent violation of the rights of Henderson and every other party in Docket 90-90 to the administrative due process to which they are entitled.

Wherefore, Henderson hereby states his most strenuous objection to the consideration of the change in allocation at Edna, Texas in Docket 92-56 until and unless it is in conjunction with a prior or simultaneous resolution of the complete Petition submitted by Henderson in Docket 90-90 of which the Edna allocation is one part.

ROY E. HENDERSON

by

  
Robert J. Buenzle

His Counsel

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May 18, 1992

CERTIFICATE OF SERVICE

I, Robert J. Buenzle, do hereby certify that copies of the foregoing COMMENTS OF ROY E. HENDERSON have been served by United States mail, postage prepaid this 18th day of May, 1992 upon the following:

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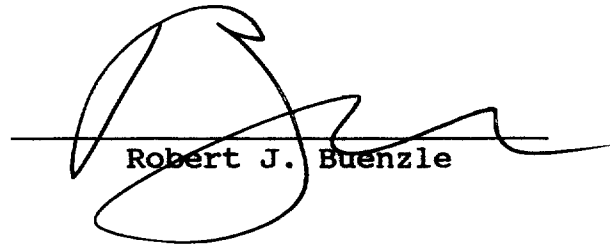
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